

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2010-79-S

IN RE:)	
)	
Waffle House, Inc.,)	
)	
Complainant/Petitioner)	ANSWER AND COUNTER
)	COMPLAINT/PETITION OF
v.)	PALMETTO
)	UTILITIES, INC.
Palmetto Utilities, Inc.)	
)	
Defendant/Respondent)	
_____)	

Pursuant to S.C. Code Ann. Regs. 103-826 and 103-830, and in compliance with the Notice issued by the Commission's Interim Chief Clerk and Administrator dated March 2, 2010, Defendant/Respondent Palmetto Utilities, Inc. ("PUI") answers the complaint of the Complainant/Petitioner ("Complainant") above-named and, pursuant to S.C. Code Ann. § 58-5-270 and S.C. Code Ann. Regs. 103-824, makes its counter complaint/petition against Complainant, as follows:

FOR A FIRST DEFENSE

ANSWER TO ALLEGATIONS OF EXHIBIT "A" TO COMPLAINT FORM

1. PUI denies each and every allegation of the complaint except as hereinafter admitted.
2. PUI admits the allegations of paragraph 1 with respect to its provision of service to the premises identified therein and that restaurants are operated at said premises under the



name "Waffle House." PUI is without sufficient information to enable it form a belief regarding the ownership of said premises and therefore denies same.

3. PUI admits the allegations of paragraph 2 that it has adopted Sand, Oil and Grease Interceptor Standards. A copy of same are attached as Exhibit "A". PUI further responds by stating that these standards apply to all restaurants which are served by PUI in its authorized service area and have been adopted to prevent the introduction of pollutants into PUI's system in violation of law including, but not limited to, Sections 7 and 8 of PUI's approved rate schedule on file with the Commission, 40 CFR § 403.5(b)(3), S.C. Code Ann. Regs. 61-9.403.5, and S.C. Code Ann. Regs. 61-25(VI)(B). PUI submits that it is expressly authorized to impose pre-treatment standards beyond those required under the aforementioned law.

4. PUI denies the allegations of paragraph 3 that it has "threatened" Complainant. Further responding to the allegations of this paragraph of the complaint, PUI would show that it has on multiple occasions given Complainant notice that its restaurants, subject of the complaint, do not comply with the aforementioned requirements of law and that service termination could result in the event Complainant did not comply – even though no such notice is required under law. *Cf.* complaint paragraph 6 (acknowledging presence of grease in Complainant effluent), Rate Schedule Section 7 ("Any ... entity introducing ...prohibited or untreated materials into the Company's sewer system may have service interrupted without notice until such discharges cease."). PUI further states that notice of intent to disconnect was sent at Complainant's request, after Complainant refused to comply with the aforementioned law and that the obligation of complying with the aforementioned law is that of Complainant, not PUI. PUI would show that, notwithstanding the fact of these notices, Complainant has willfully failed to take the action necessary to comply with the aforementioned law, has therefore has violated such law, and thus

subjected PUI's sewer facilities to continuing damage and degradation from the introduction of pollutants.

5. Responding to the allegations of paragraph 4 of the complaint, PUI is without sufficient information to form a belief as to what Complainant "believes" the cost of compliance with the aforementioned law will be to Complainant. PUI further states that the cost Complainant believes it will incur to meet its obligation to comply with the aforementioned law is irrelevant to Complainant's obligation to do so, as would be any other cost to Complainant to lawfully engage in its business. Further responding, PUI states that Complainant committed, both orally and in writing, to undertake steps for compliance before reversing course and failing to undertake any steps towards complying with the law because of Complainant's refusal to install an elder valve, the specification of which is in accordance with generally accepted engineering standards for wastewater utility systems. See complaint Exhibit "B", paragraph h.

6. PUI denies the allegations of paragraph 5. Further responding, PUI would note that Complainant acquired the services of PUI subject to the requirements of law pertaining to same, which includes the Commission-approved terms and conditions of service set forth in PUI's rate schedule as may be approved from time to time, the operative provisions of which were in effect when Complainant applied to PUI for service, and that the consequences of its choice to refuse to abide by same are solely within its control.

7. Answering paragraph 6 of the complaint, PUI is without sufficient information and belief to determine what Complainant considers to be "fully functioning grease traps" and therefore denies this allegation. Further responding to this paragraph of the complaint, PUI is without sufficient information to form a belief as to the allegations that Complainant has engaged the services of Shealy Environmental Services, Inc. ("SES"), that SES performed for

Complainant the tests described therein, or that the SES tests demonstrated the results asserted therein, and therefore demands strict proof thereof. Moreover, achievement of the test results alleged would not relieve Complainant of its obligation to comply with the aforementioned law, but at best only demonstrates that on the dates tested, the concentrations of oil and grease would not have been such to require that Complainant routinely sample, have analyzed, and report to PUI the grease and oil content of its effluent. *See* Exhibit “A”, Section C.6. The allegations of paragraph 6 of the complaint themselves demonstrate that grease is present in the effluent from Complainant’s restaurants and therefore subject Complainant to sections 7 and 8 of PUI’s approved rate schedule. Moreover, the Commission may take notice that restaurants – particularly those providing meal preparation and service of the “short order” variety operated by Complainant – produce grease.

8. PUI denies the allegations of paragraph 7 of the complaint. Further responding to the subparts of this paragraph of the complaint, PUI submits that (a) it is fully authorized under law – including its rate schedule, the pertinent terms of which have been in effect and approved by the Commission since 1988 – to preclude the introduction of pollutants such as grease into its system and to take preventative measures to prevent the introduction of same, (b) enforcement of approved provisions of an existing approved rate schedule does not – and, indeed cannot – constitute a rate increase under the filed-rate doctrine, (b) [*sic*] application of an approved rate schedule provision and notice of intent to do so in accordance with its express terms does not constitute arbitrary and capricious conduct in view of the fact that (i) Complainant does not dispute that its business generates grease which may be and has been introduced into PUI’s system and PUI is specifically authorized to preclude the introduction of pollutants such as grease into its system under its approved rate schedule, establish such construction standards for

customer facilities as it may choose to prevent the discharge of pollutants such as grease into its system by customers, and to act to prevent such discharges by interrupting service without notice; (ii) PUI is not obligated to make any advance showing to the Commission in order to implement its approved rate schedule provisions; or (iii) PUI is not obligated to obtain from the Commission advance approval to impose construction standards which are more stringent than those under generally accepted engineering standards. Further responding to this paragraph of the complaint, PUI submits that Complainant acknowledges that grease is present in its effluent which has been introduced into PUI's system and therefore renders Complainant's continued entitlement to service subject to compliance with law, including the provisions of PUI's approved rate schedule.

ANSWER TO RELIEF REQUEST IN EXHIBIT "B" OF COMPLAINT

9. PUI denies that Complainant is entitled to any of the relief requested. Further responding to the subparts of Exhibit "B" to the complaint, PUI submits as follows:

(a) PUI is not currently attempting to disconnect service in view of S.C. Code Ann. Regs. 103-538.

(b) It is the burden of the Complainant to establish its entitlement to relief under S.C. Code Ann. § 58-5-270. Moreover, the Commission has no authority to order an investigation into the matter alleged in the complaint. *Cf.* S.C. Code Ann. § 58-3-190.

(c) PUI does not seek to exercise an "unfettered right", but only its right to enforce the aforementioned provisions of law – including Sections 7 and 8 of its approved rate schedule – which expressly provide that it may interrupt service where pollutants such as grease are discharged into its system and permit it "*from time to time* may require that more stringent construction standards be followed."

(d) PUI is entitled to have the Commission enforce the filed-rate doctrine regardless of the putative financial impact on Complainant.

(e) PUI is not obligated under law to wait until the introduction of pollutants such as grease occurs and causes damage in order to give effect to the aforementioned requirements of law – including its approved rate schedule. Notwithstanding this, the complaint on its face demonstrates that the effluent discharged by Complainant contains pollutants. *See* complaint paragraph 6. Moreover, the burden in the instant matter is upon Complainant, not PUI.

(f) PUI is expressly permitted by the aforementioned requirements of law – including its approved rate schedule – to require a customer discharging pollutants such as grease to install facilities which exceed generally accepted engineering standards. Moreover, the burden in the instant matter is upon Complainant, not PUI.

(g) PUI is expressly authorized by the aforementioned requirements of law – including its approved rate schedule – to impose standards pertaining to the construction of facilities to pre-treat pollutants such as grease and to impose requirements more stringent than those which accord with generally accepted engineering standards and to interrupt service without notice in the event a pollutant such as grease is being discharged by Complainant – a fact admitted on the face of the complaint. The level of grease is not relevant to PUI's authority to impose or enforce such standards, but only bears on PUI's right to require that Complainant undertake periodic testing and reporting to PUI. *See* Exhibit "A", Section C.6.

(h) The requirement of elder valves in sewer utility facilities is in accordance with generally accepted engineering standards. PUI is expressly authorized by the aforementioned requirements of law – including its approved rate schedule – to impose standards pertaining to the construction of facilities, including those designed to pre-treat pollutants such as grease,

which are more stringent than those which accord with generally accepted engineering standards. Moreover, this Commission has recognized that installation of elder valves provides economic benefits to both sewer utilities and customers alike. *See* S.C. Code Ann. Regs. 103-532.4.

FOR A SECOND DEFENSE

10. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

11. The Complaint fails to state a cause of action. There is no allegation of any act or thing done or omitted to be done by PUI which forms the basis for a complaint cognizable under the law. *See* S.C. Code Ann. § 58-5-270.

**FOR A THIRD DEFENSE AND BY WAY
OF COUNTER COMPLAINT/PETITION**

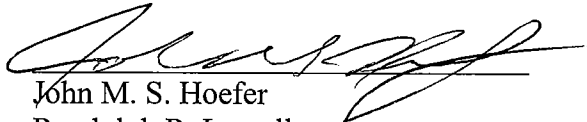
12. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

13. On its face, the complaint acknowledges that Complainant has introduced pollutants into PUI's system. *See* complaint paragraph 6.

14. On its face, the complaint acknowledges that Complainant refuses to undertake good engineering practices to remove its grease from the system and knowingly, willfully, and intentionally continues to introduce pollutants into the system.

15. PUI is therefore entitled to an order of the Commission authorizing PUI to immediately interrupt Complaint's service until it complies with the aforementioned requirements of law, including PUI's rate schedule, and awarding PUI its reasonable attorney's fees incurred as a result of Complainant's conduct as permitted under Section 7 of PUI's rate schedule.

WHEREFORE, having fully answered the Complaint herein, and made its counter complaint and petition, PUI requests that (1) the Complaint be dismissed with prejudice, (2) that the relief sought by Complainant be denied, and (3) PUI be awarded its reasonable attorneys fees on its counter complaint and petition and such other and further relief as is just and proper.



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Attorneys for Palmetto Utilities, Inc.

Columbia, South Carolina
This 31st day of March, 2010.

Palmetto Utilities, Inc.

**SAND, OIL, AND GREASE
INTERCEPTOR STANDARDS**

As of August 1, 2009

The following is the policy statement and standards guide (Standard) of Palmetto Utilities, Inc. (PUI) for the design and installation of sand, oil, and grease interceptors. This statement contains PUI's interpretation and implementation of its rate schedule and other lawful authority.

A. GENERAL

1. It is the intent of this Standard to provide for specific standards for grease trap location, design, installation, construction, operation and maintenance so as to comply with the sewer use and structure. It should be noted that failure to comply with the Standard shall be considered a violation of applicable sections of the existing sewer use and rate schedule and consequently, subject to denial or discontinuance of sewer service.
2. The introduction of sand, oil, and grease into PUI's system represents the introduction of a pollutant into the system that has a detrimental impact on system integrity. By properly controlling the introduction of these pollutants through the use of interceptors and traps, the system integrity is maintained and operation and maintenance for these issues are minimized. Without this Standard and customer compliance with this Standard, the likelihood of overflows is increased, operation and maintenance costs are significantly increased, and the system operates less efficiently.
3. This Standard may be revised from time-to-time as PUI deems appropriate and in PUI's sole discretion.

B. DEFINITIONS

1. Food Service Establishment.

Any commercial facility discharging kitchen or food preparation wastewaters, including but not limited to restaurants, motels, hotels, cafeterias, hospitals, schools, bars, etc., any meat and/or fish processor, and any other facility which, in PUI's opinion, would require a grease trap installation by virtue of its operation. Such definition normally includes any establishment which is required to have a South Carolina Department of Health and Environmental Control (SCDHEC) food service license.

2. Grease Trap/Grease Interceptor.

A grease interceptor is a device which serves to trap and retain within its confines all suspended or semi-solid grease which may have passed through sinks, drains, or other fixtures. The retained grease is then kept from entering the service line which connects the business to the main connector sewer. Ultimately and on a timely basis, the grease must be removed by the owner/operator of the business

and disposed of in a satisfactory fashion. This may be by the owner/operator or by professionals who contract this type of work.

3. Oil Separator.

An oil separator is a device which serves to trap and retain oils or other flammable liquid to prohibit the introduction of same into the sewer system by accident or otherwise.

4. Sand Interceptor.

A sand interceptor is a device which is designed to trap sand and other solids and prohibit its entry into the sewer system.

5. Neutralizing Device.

A neutralizing device is a tank or manufactured device installed to dilute or neutralize acids or corrosive liquids prior to discharge onto collector lines. Such devices shall be automatically provided with a sufficient intake of diluting water or neutralizing medium, so as to make its contents non-injurious before being discharged into the collection system.

C. GENERAL REQUIREMENTS

The following administrative, operational, and other general requirements are applicable to all food service establishments, new or existing. Particular requirements for grease trap/interceptor construction, specifically pertaining to both new and existing food service establishments, can be found in Section D of this Standard.

1. ALL FOOD SERVICE ESTABLISHMENTS IN THE PUI SERVICE AREA SHALL HAVE GREASE-HANDLING FACILITIES APPROVED BY PUI. Establishments whose grease handling facilities are not in accordance with this Standard shall be given a compliance schedule with a deadline not to exceed eight (8) weeks from initial notification date.
2. All food service establishment grease handling facilities/operations shall be subject to periodic review, evaluations, and inspections by PUI representatives at any time. Results of inspections will be made available to facility owners with overall ratings assigned and recommendations for correction/improvement (if necessary) delineated. A PUI REPRESENTATIVE MUST BE PRESENT AT ALL PUMP-OUT OPERATIONS.
3. VIOLATIONS OF THIS STANDARD WILL BE CONSIDERED GROUNDS FOR DISCONTINUANCE OF SEWER SERVICE. PUI HAS THE RIGHT TO TERMINATE A CUSTOMER'S SERVICE WITHOUT NOTICE.

4. Food service establishments whose operations cause or allow excessive grease to discharge or accumulate in the sewer collection system are liable to PUI for all costs related to PUI service calls for line blockages, line cleanings, line and pump repairs, property damages, etc. including all labor, materials, equipment, and overhead. Failure to pay all service-related charges may also be grounds for sewer service discontinuance.
5. PUI will recommend to the Owner(s) the frequency of the grease removal. It will be the responsibility of the Owner to contract the grease removal provider and ensure that the provider is removing the grease based on the recommended frequency. In maintaining the grease interceptors, the Owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain on site records of dates, and means of disposal which are subject to review by PUI.

The Owner(s) should ensure that all solids are removed when no more than 75% of the interceptor's capacity is reached.

Failure to comply with the recommended frequency schedule may be grounds for sewer service discontinuance.

6. Any food service establishment whose effluent is suspected or perceived by PUI to contain a concentration of greater than 100 mg/l of oil and grease may be required to routinely sample their grease trap effluent and have it analyzed for oil and grease at the expense of the Owner and furnish a copy of the analysis to PUI.
7. All grease traps/interceptors shall be designed, installed, and located in accordance with this Standard to allow for complete access to inspection, maintenance, etc.
8. All grease traps/interceptors must be installed by properly licensed contractors.
9. Should a deficiency in the maintenance of the grease trap be noted during an inspection by PUI, a citation for correction may be given to the facility. The facility must correct the deficiency within five (5) calendar days following that date.

D. CONSTRUCTION STANDARDS

1. New Facilities
 - a. All newly constructed (or newly located) food service establishments shall be required to install a grease interceptor, approved by PUI. Grease interceptors shall be sized at 20 gallons per food service seat with no interceptor less than 1,000 gallons total capacity.

- b. New facilities must have a are required to complete an initial grease trap application to install a grease trap and submit such application with plans, specifications, plumbing diagrams, riser diagrams, etc. to PUI for review.
 - c. All grease trap/interceptor plans and specifications must be reviewed and approved by PUI prior to installation. An approval letter for each new trap will be issued by PUI prior to construction and/or installation.
 - d. The construction and location criteria for grease interceptors must be in accordance with the Environmental Protection Agency (EPA) Guidance Document, "On-site Wastewater Treatment and Disposal Systems," Chapter 8.
 - e. All grease interceptors, whether singular or in series, must be directly accessible from the surface and must be fitted with an extended inlet sanitary tee that terminates 12" above the tank floor. The minimum access opening dimensions shall be 18" by 18" or a minimum of 24" in diameter. Two (2) access openings (inlet and outlet chambers) to underground traps are required and should be removable with ease by one person and accessible from the surface. All grease interceptors must have an elder valve. A typical grease trap is provided in detail as Appendix A to this Standard.
 - f. Maintenance of grease traps/interceptors must include thorough pump-out and/or cleaning as needed, with a minimum frequency of six (6) times per year per Section C, Paragraph 5 of this Standard. Maintenance contracts may be required to be submitted to PUI as called for in Section C, Paragraph 5. The Owner, however, is ultimately responsible for proper maintenance of the grease trap facility(ies).
 - g. No new food service facility will be allowed to initiate operations until grease handling facilities are installed and approved by PUI.
2. Existing Facilities
- a. All existing food service establishments (or renovated or expanded establishments) must have grease handling facilities approved by PUI. Failure to comply with this Standard will be considered a violation of the rate schedule and will subject the establishment to sewer service discontinuance.
 - b. Wastewater from dishwashers and garbage grinders should not be discharged to grease traps/interceptors, unless approved by PUI.
 - c. In the maintaining of existing grease traps/interceptors, the Owner(s) shall be responsible for the proper removal and disposal by appropriate means

of the captured material and shall maintain records of the dates and means of disposal which are subject to review by PUI, per Section C, Paragraph 5 of this Standard.

- d. In the event of an existing food service establishment's grease handling facilities are either under-designed, substandard, or poorly operated, the Owner(s) will be notified in writing, of the required improvements and given a compliance deadline not to exceed eight (8) weeks to conform with the requirements of this Grease Standard. This does not include general grease removal violations referred to in Section C, Paragraph 9 of this Standard.
- e. Any use of enzymes or other grease solvents, emulsifiers, etc. in lieu of physical cleaning is not considered acceptable grease trap maintenance practice.

3. New Food Service Establishments in Existing Buildings

- a. Where practical, new food service establishments locating in existing buildings will be required to comply with the Grease Trap Standards applicable to new facilities, i.e., outdoor grease traps units (minimum size 1,000 gallons) shall be installed. Flow control fittings and/or automatically cleaned units will be required in all cases. Maintenance contracts and/or clean-out records will also be required.

E. **SAND, OIL AND GREASE INTERCEPTOR**

- 1. Provide precast concrete vault.
 - a. 4000 psi concrete.
- 2. Other construction and/or prefabricated materials may be considered by PUI. Shop drawing submittal and approval by PUI shall precede any construction or installation.

F. **LOCATING**

- 1. Easily accessible for cleaning and solids removal.

G. **MANHOLE FRAMES AND COVERS**

- 1. Provide grey iron castings, ASTM A48, Class 30 iron.
- 2. Machine all bearing surfaces.
- 3. Coat frames and covers with two shop coats of bitumastic paint.

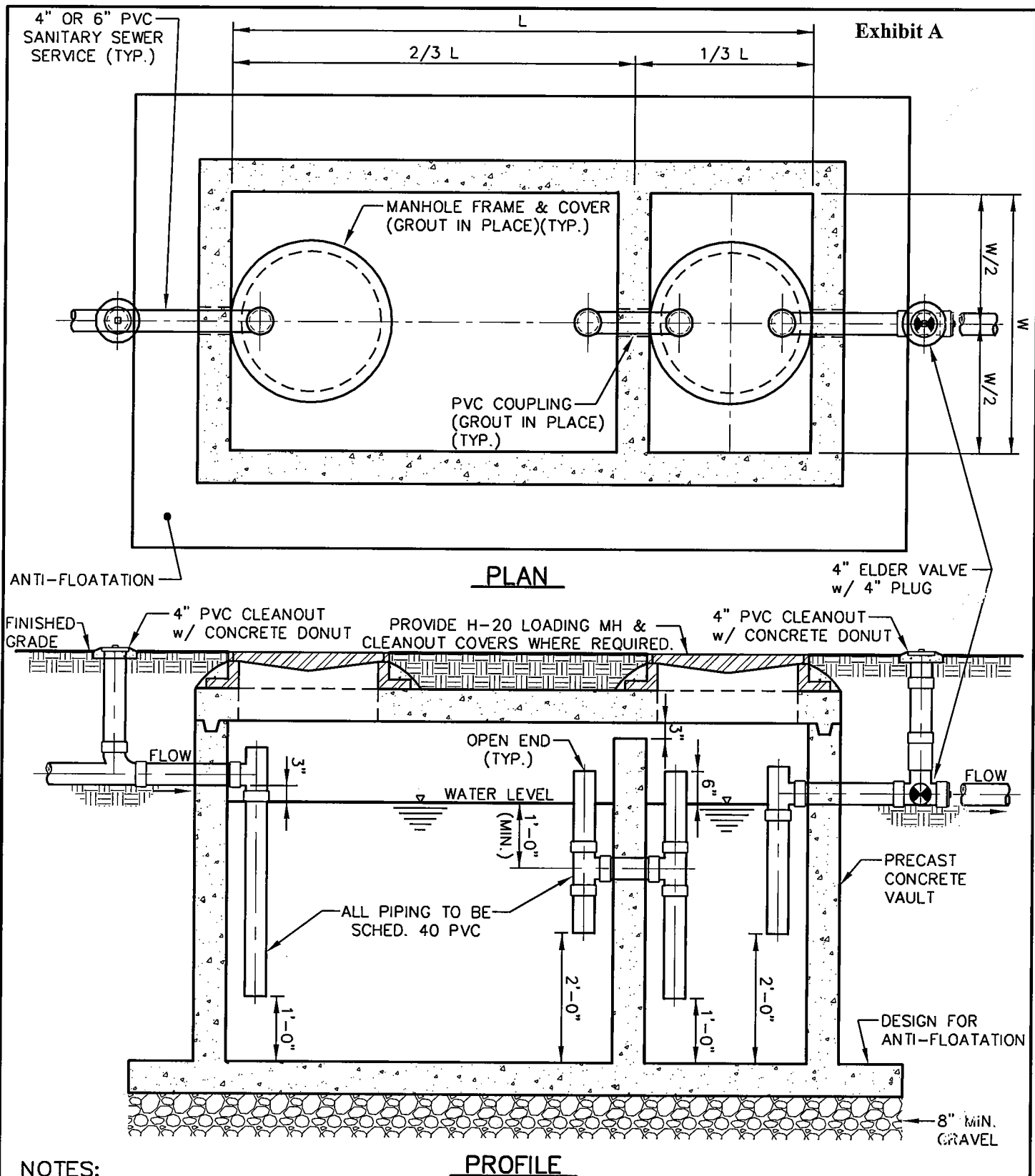
4. Provide watertight covers, where indicated, conforming to above requirements and with frame tapped for four bolts, countersunk in cover.
 - a. Provide rubber gasket between frame and cover.

H. ENFORCEMENT

1. Enforcement of this Standard shall be in accordance with the provisions of PUI rate schedule and applicable law. **FAILURE TO COMPLY WITH THIS STANDARD MAY BE GROUNDS FOR DISCONTINUANCE OF SEWER SERVICE WITHOUT NOTICE. ADDITIONALLY, FAILURE TO COMPLY MAY RESULT IN NOTIFICATION TO THE COUNTY HEALTH DEPARTMENT FOR REQUEST OF ENFORCEMENT ACTION WHICH MAY LEAD TO REVOCATION OF FOOD SERVICE PERMITS.**
2. For new food service establishments, PUI may elect to request from appropriate building official that certificates of occupancy be withheld until compliance with PUI's requirements, including grease trap compliance is fully met.

Appendix A

Example of a grease trap design

**NOTES:**

1. ALL PROPOSED GREASE TRAP PLANS TO BE SUBMITTED & APPROVED BY PALMETTO UTILITIES, INC. PRIOR TO INSTALLATION.

2. ELDER VALVE MUST BE INSTALLED.
 3. MINIMUM CAPACITY 20 gal. PER SEAT.
 4. CALL (803) 699-2422 FOR INSPECTION.

PALMETTO UTILITIES STANDARD
GREASE TRAP WITH ELDER VALVE

SCALE: 1/2"=1'-0"